THE HON'BLE SRI JUSTICE BILAL NAZKI
AND
THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION Nos. 2662 and 2664 of 2006

Date: 11-08-2006.

Between :

M/s.Zuari Cement Limited, Yerraguntla, Kadapa, rep. by its Authorized Signatory Shri Gopal K.Maheshwari.

.....Petitioner

And

Appellate Deputy Commissioner (CT), Narsingraopet, Kurnool and another.

.....Respondents.

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AND
THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION Nos. 2662 and 2664 of 2006

COMMON ORDER : (Per Hon'ble Sri Justice Bilal Nazki)

These two writ petitions are being disposed of by this common order, as they pertain to same questions of fact and law, but the years of assessment are different. Facts are taken from writ petition No.2662 of 2006.

This writ petition has been filed by a Company through its authorized signatory. The Appellate Deputy Commissioner, in an appeal filed by the assessee, confirmed the order passed by the Assistant Commissioner (CT) LTU, Kadapa. The facts of the case may be summarized as under –

The Government of Andhra Pradesh issued G.O.Ms.No.108 on 20.05.1996 declaring various incentives for setting up of new industries in Andhra Pradesh. The incentives included deferment of sales tax

and also power subsidy. The deferred sales tax was to be treated as loan due, payable after 14 years. In the case of expansion of Firms, the scheme contemplates grant of deferral benefit in respect of sales tax payable on the enhanced turnover, which was in excess of the base year turnover, subject to a ceiling limit of 135% of the additional fixed capital investment. Base turnover was defined as the best production achieved during three years preceding the year of expansion or the maximum capacity of production expected to be achieved as per the appraisal made by the financial institutions, whichever was higher.

The petitioners claimed that they invested Rs.275.90 crores for expansion of the Unit and had applied for grant of incentive. The State Level Committee, after enquiry, granted clearance for grant of incentive. The Commissioner of Industries issued final eligibility certificate on 10.04.2001. The base year production was fixed at 5,64,700 Metric tons of OPC/PPC cement and 36,443 Metric tons of clinker turnover. The eligibility limit was fixed at Rs.371.03 crores. The specified period of deferment was 14 years i.e. from 15.02.1999 to 14.02.2013.

It is contended that prior to issuance of

G.O.Ms.No.108 in May 1996, G.O.Ms.No.386 was issued on 26.09.1994 and G.O.Ms.No.75 was issued on 14.03.1996. Under G.O.Ms.No.75, it was clarified that the tax deferral benefit shall be available only on the amount of tax payable on additional local sales over and above the previous level of local sales before expansion. It is the contention of petitioners that G.O.Ms.No.75 had not been incorporated in G.O.Ms.No.108, and G.O.Ms.No.108 brought specific changes to indicate that G.O.Ms.No. 75 would not be operative after G.O.Ms.No.108 was issued. After G.O.Ms.No.108 was issued, package incentives were given for expansions. It should be presumed that G.O.Ms.No.108 was in supercession of earlier G.Os., and according to the petitioners, only the base year production should be taken into reckoning for the purpose of computing the tax deferment, but not the yearly turnover. Accordingly, the petitioners filed returns and claimed tax deferment. If the base year production was taken into reckoning, the petitioners are liable to pay sales tax during the assessment year 2002-2003 to an extent of Rs.3,46,11,981/- while being entitled to claim tax deferment in respect of tax payable on the balance turnover under the Andhra Pradesh General Sales Tax Act, 1957 (for short 'the Act'). However, the Assistant Commissioner (CT) (LTU), Kadapa, did not follow G.O.Ms.No.108 and computed the tax deferment by

adopting the base year turnover as the basis. As a result, the deferment benefit extended to the petitioners stood reduced substantially. Petitioners have already paid Rs.3,60,940/- being 12.5% of the disputed tax in order to maintain the appeal under proviso to Section 19 of the Act.

The only contention raised by the learned counsel for petitioners is that G.O.Ms.No.108, dated 20th May 1996 had to be implemented in terms of specifications incorporated on its own and the terms and conditions in G.O.Ms.No.75 could not be incorporated into G.O.Ms.No.108, and it was only the base year production that should be taken into consideration.

The respondents, on the other hand, contended that G.O.Ms.No. 75 was never superceded and it had clarified that the tax deferment would be only on the amount of tax payable on additional local sales over and above the previous local sales before expansion, and in case the local sales after expansion were less than or equal to the previous level, the actual tax liability on such lesser sales shall be payable and there would be no scope for any tax deferment as there would not arise any additional tax liability.

This question has been considered by this Court in

a judgment reported in **Orient Cement, Devapur v. State of A.P.**[1], and this Bench has also relied on this case while disposing of another writ petition being W.P.No.2009 of 2006.

Therefore, relying on the same judgment (1st supra), these writ petitions are allowed.

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(BILAL NAZKI, J)

11th August 2006

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(G. CHANDRAIAH, J)

ajr

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[1] 42 APSTJ 29